



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 10-211
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**APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS AND
AUTHORIZATIONS OF CIMCO COMMUNICATIONS, INC. BY COMCAST
PHONE LLC, COMCAST PHONE OF MICHIGAN, LLC AND COMCAST
BUSINESS COMMUNICATIONS, LLC**

**CLARIFICATION REGARDING LOCAL FRANCHISING AUTHORITIES'
SUBMISSIONS UNDER SECTION 652(d)(6) OF THE ACT**

WC Docket No. 09-183

On October 7, 2009, CIMCO Communications, Inc. (CIMCO), and Comcast Phone, LLC (Comcast Phone), Comcast Phone of Michigan, LLC (Comcast Michigan) and Comcast Business Communications, LLC (Comcast Business) (together, Comcast Entities) (CIMCO and Comcast Entities together, Applicants) filed an application¹ pursuant to section 214 of the Communications Act of 1934, as amended.² Applicants seek Commission approval of the transfer of certain CIMCO assets and authorizations to Comcast Entities.

CIMCO provides, among other services, local exchange telephone services to business customers in approximately 298 local service areas throughout Illinois, Indiana, Michigan, Ohio and Wisconsin in which Comcast or one of its affiliates holds a franchise to offer cable television service. The Applicants requested a waiver of the restrictions of section 652(b) of the Communications Act in the event the Commission deems this provision applies to the proposed transaction.³ Section 652(b) prohibits cable

¹ CIMCO Communications, Inc. and Comcast Phone, LLC, Comcast Phone of Michigan, LLC, and Comcast Business Communications, LLC Combined International and Domestic Application, WC Docket No. 09-183 (filed October 7, 2009) (Application). Applicants filed a supplement to their Application on October 28, 2009. See Letter from Charles W. Logan, Counsel to Assignees to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-183 (filed Oct. 28, 2009) (Oct. 28 *Ex Parte* Letter). At the time of filing their Application, Applicants also filed a request for confidential treatment seeking protection for proprietary or confidential information included in the Application. Accordingly, the Wireline Competition Bureau adopted and released a Protective Order to ensure that any documents containing such information receive adequate protection. See *Applications Filed for the Acquisition of Certain Assets and Authorizations of CIMCO Communications, Inc. by Comcast Phone, LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC*, Protective Order, WC Docket No. 09-183, DA No. 09-2516 (rel. Dec. 1, 2009).

² 47 U.S.C. § 214.

³ Application at 9. The Applicants contend that the Commission reasonably could interpret section 652(b) as not applying to the proposed transaction because CIMCO did not begin offering telephone exchange service until after (continued . . .)

operators from acquiring “directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator’s franchise area.”⁴ Section 652(d)(6) authorizes the Commission to waive section 652(b) if: (1) “the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served” and (2) the relevant local franchising authorities approve of such waiver.⁵ With respect to the latter requirement, neither the Communications Act nor Commission rules establish a particular process for a local franchising authority to express its approval or disapproval of a waiver of the restrictions of section 652(b). There appears to be no prior instance where an applicant has sought such a waiver from the Commission.

The Commission announced in a Public Notice, released December 1, 2009, a process to be used in this proceeding for soliciting responses from the relevant local franchising authorities and for determining whether a local franchising authority approves of a Commission waiver of the restrictions of section 652(b).⁶ Footnote 20 of the Public Notice addressed local franchising authority objections to a waiver, stating:

Because the statutory criteria for whether a waiver of the restrictions of section 652(b) is warranted depends, in relevant part, on whether “the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served,” any local franchising authority objections to the waiver should be based on reasons related to the proposed transaction rather than extraneous matters. *See* Application at 22 n.46. We therefore request any local

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January 1, 1993. Application at 11 n.15, citing 47 U.S.C. § 572(e) (defining the term “telephone service area”). Nevertheless, the Applicants request that the Commission “process their application on the basis of their waiver request, and to assume that section 652(b) applies to this transaction without deciding whether, in the context of a cable operator’s acquisition of a CLEC, section 652(b) applies to competitive local exchange carriers (LECs) that were not providing telephone exchange service as of January 1, 1993.” *Id.*

⁴ 47 U.S.C. § 572(b). Section 652(a) places a converse prohibition on local exchange carriers and their affiliates. 47 U.S.C. § 572(a). In addition, section 652 prohibits cable operators and LECs from entering “into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services” in the overlap area of the providers’ cable franchise area and telephone service area, respectively. 47 U.S.C. § 572(c). Section 652 is implemented in the Commission’s rules at 47 C.F.R. § 76.505.

⁵ 47 U.S.C. §§ 572(d)(6)(A)(iii), (d)(6)(B). The Applicants do not claim to satisfy the other waiver criteria set forth in section 652(d)(6)(A). *See* 47 U.S.C. § 572(d)(6)(A)(i) & (ii).

⁶ *See CIMCO Communications, Inc. and Comcast Phone, LLC, Comcast Phone of Michigan, LLC, and Comcast Business Communications, LLC, for the Acquisition of Certain Customers and Assets of an Authorized Domestic and International Carrier*, WC Docket No. 09-183, Public Notice, FCC 09-104 (rel. Dec. 1, 2009) (Public Notice). Under the prescribed process, Applicants were required to serve, within 10 days of December 1, 2009, a copy of the Public Notice on any entity in the overlap areas that currently has local franchising authority over Comcast, and to file with the Commission certificates of service attesting that Public Notice was timely served. *Id.* at 4-5. In addition, the Applicants were expected to inform the relevant authorities informally of the Public Notice and of the procedures established for local franchising authorities to notify the Commission of their approval or disapproval. *Id.* at 5. The Applicants certified that they served a copy of the Public Notice by UPS Overnight Mail on all 274 local franchising authorities on December 3-4, 2009. *See* Letter from Wesley R. Heppler, Counsel to Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-183 (filed Dec. 9, 2009).

franchising authority that does not approve of the requested waiver to explain the reasons for its disapproval.⁷

In a pleading filed with the Commission on December 30, 2009, a local franchising authority asserted that this footnote “restricted” the grounds on which local franchising authorities may disapprove of a waiver.⁸ We clarify that, while footnote 20 expressed an expectation that objections raised by a local franchising authority would arise from “reasons related to the proposed transaction,” local franchising authorities may file any expression of approval or disapproval that they believe to be consistent with section 652. In the final sentence of footnote 20 the Commission merely requested that any local franchising authority that objects to the requested waiver “explain the reasons for its disapproval.” We reiterate that request, but also clarify that the request is not a filing requirement.

The Public Notice dated December 1, 2009, established a process whereby a local franchising authority that fails to inform the Commission of its decision within 60 days after service of the Public Notice will be deemed by the Commission to have approved of the proposed waiver of the restrictions of section 652(b).⁹ To ensure that local franchising authorities have adequate time to prepare their submissions in light of the instant clarification of footnote 20, we hereby extend the time for all franchising authorities to file expressions of approval or disapproval until March 1, 2010.

GENERAL INFORMATION

All filings concerning matters referenced in this Public Notice should refer to **DA 10-211** and **WC Docket No. 09-183**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain, and shall comply with the instructions in the December 1, 2009 Public Notice.

For further information, contact Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, at 202 / 418-0809.

Action taken by the Wireline Competition Bureau on January 29, 2010.

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⁷ *Id.*

⁸ See City of Detroit, Michigan, Petition for Reconsideration, filed December 30, 2009, at 2; City of Detroit, Michigan, Reply to Opposition to Petition for Reconsideration, filed January 18, 2010, at 4-7.

⁹ See Public Notice, at 5.